

June 26, 2008

**OFFICE OF THE HEARING EXAMINER
KING COUNTY, WASHINGTON**

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REPORT AND DECISION

SUBJECT: Department of Development and Environmental Services File No. **L05P0002**
Proposed Ordinance No. **2007-0626**

SHADY LAKE PLAT
Preliminary Plat Application

Location: 19023 – 172nd Place Southeast

Applicant: Sukhjinder Mangat (Santwant Singh, successor)
represented by **Aleanna Kondelis**
Cramer Northwest
945 North Central, Suite 104
Kent, Washington 98032

King County: Department of Development and Environmental Services (DDES)
represented by **Trishah Bull**
900 Oakesdale Avenue Southwest
Renton, Washington 98055
Telephone: (206) 296-6758
Facsimile: (206) 296-7051

SUMMARY OF RECOMMENDATIONS/DECISION:

Department's Preliminary Recommendation:	Approve, subject to conditions
Department's Final Recommendation:	Approve, subject to revised conditions
Examiner's Decision:	Approve, subject to further revised conditions

EXAMINER PROCEEDINGS:

Hearing Opened:	December 13, 2007
Hearing Continued Administratively:	December 13, 2007
Hearing Record Closed on Administrative Continuance:	December 31, 2007

Participants at the public hearing and the exhibits offered and entered are listed in the attached minutes. A verbatim recording of the hearing is available in the office of the King County Hearing Examiner.

FINDINGS, CONCLUSIONS & DECISION: Having reviewed the record in this matter, the Examiner now makes and enters the following:

FINDINGS:

1. General Information:

Owner/Developer: Sukhjinder Mangat (Santwant Singh, successor)
13306 SE 240th Street
Kent, WA 98042

Engineer: Cramer Northwest Inc.
945 North Central, Suite 104
Kent, WA 98032
253-852-4880

STR: SE-36-23-5

Location: The site is located at 19023 172nd Place SE. The parcel is bordered on the north by SE 188th Street.

Zoning: R-4-SO
Acreage: 4.27 acres
Number of Lots: 17
Density: 4 units per acre
Lot Size: Ranges from approximately 4,900 to 14,400 square feet
Proposed Use: Single-family detached dwellings

Sewage Disposal: Cedar River Water and Sewer District
Water Supply: Cedar River Water and Sewer District
Fire District: King County District No. 40
School District: Kent School District No. 415

Complete Application Date: February 22, 2005

2. Except as modified herein, the facts set forth in the DDES reports to the Examiner and the DDES and King County Department of Transportation (KCDOT) testimony are found to be correct and are incorporated herein by reference.
3. The subject property lies east of Petrovitsky Road just northwest of Shady Lake (aka Mud Lake), in the unincorporated area east of Renton and Kent. Zoned R-4-SO, it is a narrow rectangle, with the long axis oriented north-south, and is 4.27 acres in area. It possesses frontage on the south side of Southeast 188th Street east of Petrovitsky Road, and also possesses frontage at the current stub terminus of 172nd Place Southeast, which extends northward from Southeast 192nd Drive, also east of Petrovitsky Road. (Petrovitsky Road Southeast is an arterial roadway running generally north-south in the area of the subject property.) The surrounding area is undergoing

urbanization from formerly large lot suburban and semi-rural residential parcels to developments of fairly standard urban densities of detached single-family residences. Several other subdivisions and short plats are proposed in the Shady Lake area, for a total addition of approximately 165 lots, with much of the road access via Southeast 192nd Drive east from Petrovitsky Road.

4. The site topography slopes generally gently to the southeast. The property is located within the Peterson Creek sub-basin of the lower Cedar River basin, with drainage first draining to nearby Shady Lake to the southeast. Approximately two acres of upstream flow are tributary to the site. A Class III wetland area runs diagonally northwest/southeast through the northern half of the site, associated with tributaries to Shady Lake. The site is wooded with a successive growth mixed-species forest of native coniferous and deciduous trees, along with some lawn and landscaping associated with the property's existing development, a single-family residence and a barn in the southern portion of the site, accessed via a driveway extending northerly from 172nd Place Southeast.
5. The Applicant proposes subdivision of the property into 17 lots for detached single-family residential development and separate tracts for open space (including wetland and buffer protection), recreation, private access tracts and drainage detention/water quality facilities, some in combination. Six development lots would be created in the northern portion north of the dividing wetland, and 11 to the south. The proposed density is approximately four dwelling units per acre, with lot sizes ranging from approximately 4,900 to 14,400 square feet. The existing residence in the southern portion of the site will be retained within Lot 15; the barn will be removed.
6. The property is subject to the Special District Overlay tree retention requirements of KCC 21A.38.230; a pertinent condition of approval has been recommended.
7. The proposed surface water drainage system will utilize shared facilities with the adjacent proposed *Shady Lake* short plat development to the east. A surface water drainage adjustment has been approved by DDES under file L05V0090 to allow combination of the two onsite drainage sub-basins and to allow the shared facilities proposal. Drainage currently sheetflows generally to the south-southeast to the onsite wetland in the northern portion, and in the southern portion generally sheetflows to the southeast into a ditch in 172nd Place Southeast. A drainage facility tract will be located on the north side of the wetland in the northern portion of the site. Runoff from the southern sub-basin will be diverted to the shared detention/water quality facility in the adjacent *Shady Lake* short plat. Controlled detention releases will be to the downstream wetland area.
8. A discrete recreation tract (Tract A) is proposed for the southern portion of the site; recreation facilities are also proposed to be developed in the drainage facility tract in the northern portion. (Facilities are required on both sides of the dividing wetland area since KCC 21A.14.180.C.8 requires that recreation facilities in residential subdivisions be accessible and convenient to development residents.)
9. Road access to the proposed development lots will be provided by the extension of a minor stub road due south from Southeast 188th Street, serving Lots 1-6 north of the wetland area as well as the drainage tract in that area, while in the southern portion access will be provided by the extension of 172nd Place Southeast as a short north-south cul-de-sac road extending deep into the southern portion and terminating in an offset bulb cul-de-sac. A short private access tract

would extend northerly from the west side of the bulb to serve Lots 7-12. The remaining Lots 13-17 and a recreation area tract (Tract A) in the southern portion will be served by the cul-de-sac road.

10. The following offsite road improvements are required of the development:

- A. The offsite segment of 172nd Place Southeast from the property south to the intersection with Southeast 192nd Drive are intended to be improved in joint and/or in counterpart fashion by the subject development, the *Shady Lake* Short Plat abutting to the east of the southern portion of the site (including the remainder of the cul-de-sac), and the *Mitchell* Short Plat to the south. DDES/KCDOT initially recommended that a full width offsite improvement be a requirement of the subject subdivision, “either individually with this subdivision or in conjunction with the short plat,” (referring to the pertinent short plats along the route south to Southeast 192nd Drive). On reconsideration at the Applicant’s request, KCDOT agreed that only a “half-street” improvement (with sufficient extra width to provide two vehicular travel lanes for a total of 20 feet of road width plus eight feet additional for shoulder and walkway, etc.) is sufficient as a requirement tied to the subject development itself. (Such “half street plus” approach is commonly utilized as an interim improvement when sequential development occurs in piecemeal fashion, but the sequence is not guaranteed.)
- B. The offsite portion of Southeast 192nd Drive from 172nd Place Southeast to its intersection with Petrovitsky Road must be improved to a minimum of a 24 foot wide roadway with a five-foot wide paved shoulder, in order to provide sufficient interim improvement as access from Petrovitsky Road to the proposed development with safe pedestrian improvement. (This improvement may be made jointly with other developers with projects in the area also dependent on the interim improvement of Southeast 192nd Drive from Petrovitsky Road to their developments; the subject development is only subject to the portion from Petrovitsky Road to 172nd Place Southeast, however, either individually or jointly.)
- C. The SEPA mitigated Determination of Nonsignificance (DNS) for the proposed development sets forth the following mitigation measure requiring installation of left turn channelization and related lengthy road tapers on Petrovitsky Road at the intersection with Southeast 192nd Drive:

To mitigate the significant adverse impact (KCC 14.80.030B) the plat of Shady Lake Plat (DDES File #L05P0002) will have on the intersection of Southeast 192nd Drive/Petrovitsky Road, the Applicant shall install, either individually or in conjunction with other development projects in the area, a southbound left turn lane from Petrovitsky Road onto eastbound Southeast 192nd Drive. This turn lane shall comply with requirements in the King County Road Standards, including a 12-foot wide turn lane with no less than 100 feet of storage, one travel lane in each direction on Petrovitsky Road, eight (8) foot wide paved shoulders on each side of Petrovitsky Road and an illumination system meeting applicable County requirements. This may include relocation of any utilities conflicting with these requirements. Minor modifications to this may be proposed through the Variance process.

The design for the Southeast 192nd Drive/Petrovitsky Road intersection improvements shall be approved by the King County Department of Transportation.

In lieu of the installation of the above-noted intersection improvements prior to final plat approval, the Applicant (or successors or assigns) – either individually or jointly with other developers --may post a financial guarantee with King County which assures the installation of these improvements within two years of the recording of the plat of the Shady Lake Plat (DDES File #L05P0002). In this event, intersection improvement design must be approved by KCDOT prior to approval of the engineering plans for Shady Lake Plat.

11. The resident school pedestrian safety issues are as follows:

- A. From homes in the northern portion of the site, resident schoolchildren will walk to Ridgeway Elementary School and Northwood Middle School and high school students will be bused to Kentridge Senior High School. Safe walking conditions are in place along such walking routes to the respective schools/bus stop.
- B. From homes in the southern portion, resident students will be bused to Ridgeway Elementary School and to Kentridge Senior High School. The bus stop for elementary students will be at the Southeast 192nd Drive/172nd Place Southeast intersection. The bus stop for high school students will be at the Southeast 192nd Drive/Petrovitsky Road intersection. The aforementioned offsite 172nd Place Southeast and Southeast 192nd Drive improvements, along with internal subdivision walkway provisions, will provide safe walking conditions for those students. Resident south portion students attending Northwood Middle School, which lies to the north of the subject property on the north side of Southeast 188th Street at Petrovitsky Road, have the option of using the formal road route to Petrovitsky Road and then north along Petrovitsky Road to the school. Existing walkways along Petrovitsky Road and the required offsite 172nd Place Southeast and Southeast 192nd Drive improvements will provide safe walking conditions along such route.¹
- C. However, middle school students already living in the Southeast 192nd Drive area routinely use the attractive shorter alternative of an informal trail system to the east of the site on school district property (used for drainage detention ponds). The trail runs north from Southeast 192nd Drive (from a point approximately 200 feet east of 172nd Place) north to Southeast 188th Street to the middle school; in part, the trail is located just east of the aforementioned proposed *Shady Lake* and *Mitchell* short plat properties. An assurance of safe walking conditions from 172nd Place Southeast east along the north side of Southeast 192nd Drive to the trailhead at the road is necessary to provide sufficient school pedestrian safety on that segment of Southeast 192nd Drive; a pertinent condition is imposed as a condition of approval (see condition no. 7.f). The trail route

¹ Hearing participants expressed concern about drivers' tendency to drift out of the travel way (outside of the fog line) along this stretch of Petrovitsky Road and the effect on pedestrian safety on the at-grade adjacent walkway. The Examiner shall attach an advisory to the conditions of approval for the county to examine the road geometry in the area during review of the required road improvements to examine any problems related to geometry and road markings. Ultimately, however, in assessing the safety of pedestrian facilities, an assumption of lawful driving and adherence to lane controls must be made in preliminary plat review.

presents some pedestrian disincentives during the wet season, however, as the trail has a 20-30 foot stretch that becomes quite muddy and boggy with water puddles. Given that seasonal unattractiveness, the alternative Petrovitsky Road route must also be found sufficiently safe.²

- D. It was suggested during the hearing that the intersection of southeast 188th Street with Petrovitsky Road is in need of illumination for safety. Given the low raw numbers of the proposed development's traffic which will utilize such intersection (only the six lots in the northern portion, generating less than six peak hour trips per day), there is insufficient *nexus* to require such illumination on a general safety basis. However, based on the record, the Examiner finds the improvement necessary for school pedestrian safety in such location (which is the northern end of the Petrovitsky Road route from the southern portion of the development to the middle school). The Applicant offered to install a luminaire in such location as part of the lengthy road taper improvements associated with the left turn refuge at the intersection of Southeast 192nd Drive with Petrovitsky Road, so long as it can be done on a joint-development basis. The Examiner shall accordingly add it to the conditions of approval. (The illumination may assist with drivers' lane control issues noted elsewhere herein.)
 - E. Persons questioned the safety of school pedestrian crossings of Southeast 188th Street on the way to the middle school, in the area of the property frontage. In particular, visibility of children crossing in the areas of parked cars which may ensue from the development occupancy (see finding no. 14) is an expressed concern. No marked crosswalk or other active control is shown by the evidence to be warranted in this regard. Flashing or non-flashing school pedestrian or general pedestrian warning signage may be in order. Persons may contact KCDOT Traffic Operations to request installation.
 - F. The pedestrian facilities in place and to be provided along with other improvements under conditions herein will provide sufficiently safe walking conditions for resident schoolchildren.
12. Hearing participants expressed concern that the subject development is being considered in piecemeal fashion, and that all of the pending developments in the area should be considered jointly and concurrently so that there is a holistic perspective taken of the cumulative impacts of development. There is no authority under county code or state law to require regulatory consideration of all development proposals in the area on a cumulative basis. The development must be considered on its own regulatory merits. (Cumulative impacts can be assessed under SEPA environmental review. The Examiner notes that except for traffic impacts at the Petrovitsky Road/Southeast 192nd Drive intersection, for which a mitigation measure is imposed which allows for joint development impact mitigation (noted above), there is no identification of significant cumulative adverse environmental impacts in the DNS for the proposed development, and there was no appeal of the DNS.)

² Persons also questioned the long term viability of the existing trail route, since it is not on public right-of-way or property. Concern was also expressed regarding its personal safety. Given the age of the users, middle-schoolers rather than elementary schoolers, and reasonable reliance on parental direction and the availability of an alternative public road route via Petrovitsky Road, the Examiner is not persuaded of any unreasonable safety of the trail. In the final analysis, the Examiner is powerless to ban its use, anyway.

13. Particular concern is addressed to the sufficiency of the proposed interim width improvements of Southeast 192nd Drive between Petrovitsky Road and 172nd Place Southeast, which road segment is contended to present a safety hazard even with the proposed interim improvements. It is also argued that the segment should have parking restrictions since on-street parking in that location will present a safety hazard as well. It is also represented that Southeast 192nd Drive should be classified by the county as an urban neighborhood collector. The Examiner has no authority to honor these requests and contentions with respect to Southeast 192nd Drive. First, the road classification of the roadway is not under Hearing Examiner jurisdiction, but is under KCDOT jurisdiction. Next, there is no safety hazard evident from the record which suggests that with the addition of *this* development's traffic to the road and with above-noted interim improvements required, the subject Southeast 192nd Drive segment from Petrovitsky Road to 172nd Place Southeast will present any safety hazard to traffic and/or pedestrians.³ There is also no evidence that the segment will experience excessive on-street parking, or that such parking would present a safety hazard. Parking restrictions are under the administrative authority of KCDOT, and if parking overflows are experienced in the neighborhood, as anywhere, parking restrictive signage and enforcement can be requested and put into place.
14. Questions were also raised regarding the potential for overflow parking on Southeast 188th Street from the northern portion of the development. Again, should such overflow occur, parking regulation can be established and enforced to preclude any safety hazards. There is no evidence in the record persuasively demonstrating that overflows will occur, nor that they would present a hazard, although common sense indicates that overflow might occur during the uncommon high-attendance social occasion which occurs infrequently, but not uncommonly, in residential living.
15. The use of area roadways by construction-related vehicles during development is also a concern. This is a temporary construction-period issue not directly related to the regulatory preliminary plat review before the Examiner, but is under the administrative authority of KCDOT and DDES during the construction phase. Inquiries regarding construction management and road usage regulation should be addressed to those agencies.
16. Lastly, persons contend that the DNS mitigation measure which requires installation of left turn channelization improvements at the intersection of Southeast 192nd Drive and Petrovitsky Road should not be permitted, as set forth in the DNS, to be deferred to a period within two years of plat recording, but be required to be in place with first occupancy.
 - A. KCDOT recommended the imposition of the mitigation measure, based on its conclusion that a likely road hazard from turning movement conflicts will arise at the intersection with the development of the several subdivisions proposed in the area accessed by Southeast 192nd Drive, and that the required left turn refuges and related channelization of the road geometry and tapering will alleviate any such hazard.

³ The Examiner concurs with KCDOT's assertion that under the Director's discretion in administering the King County Road Standards (KCRS), there is no requirement that off-site road segments be brought to full current-standards improvement. It is not new road construction, and improvement to a level adequate to accommodate safely the development's added traffic is a reasonable standard. Deference is normally accorded to rule and standards interpretations by the agencies charged with their administration, where the interpretation is not clearly erroneous, and the Examiner accords deference to KCDOT's judgment in this regard.

- B. KCDOT states that its timing recommendation is made under its director's discretion as provided by KCC 14.80.040, taking into account that the improvement will likely be made jointly by the several developers, requiring project and financial coordination; that the subject development's traffic impact at the intersection is in and of itself not significant, but is part of the incremental cumulative significant impact of the several developments; and that the intersection is not a designated High Accident Location (HAL).

CONCLUSIONS:

1. The evidence in the record is not suggestive of a significant hazard which would be presented by the relatively short time deferral allowed by the DNS mitigation measure for its Petrovitsky Road channelization requirements, particularly given the relatively low raw numbers of traffic generated by the proposed development itself (less than 11 peak hour trips affecting the intersection, and the likelihood of a fairly significant time lag between plat recording and full build-out resulting in residential occupancy of the development. The Examiner concurs with KCDOT's rationale and shall accord deference to the Director's discretion in structuring the timing of improvement under KCC 14.80.040. It is not shown to be clearly erroneous. The mitigation measure shall be respected as is.
2. As made subject to conditions herein, sufficiently safe walking conditions will be provided to resident school pedestrians.
3. Subject to conditions herein, the proposed subdivision will make appropriate provisions for roads.
4. The proposed subdivision, as conditioned below, would conform to applicable land use controls. In particular, the proposed type of development and overall density are specifically permitted under the RA-4 zone.
5. If approved subject to the conditions below, the proposed subdivision will make appropriate provisions for the topical items enumerated within RCW 58.17.110, and will serve the public health, safety and welfare, and the public use and interest.
6. The conditions for final plat approval set forth below are reasonable requirements and in the public interest.
7. The dedications of land or easements within and adjacent to the proposed plat, as shown on the revised preliminary plat submitted on August 20, 2007, or as required for final plat approval, are reasonable and necessary as a direct result of the development of this proposed plat, and are proportionate to the impacts of the development.

DECISION:

The preliminary plat of the *Shady Lake* subdivision, as revised and received August 20, 2007, is approved subject to the following conditions of approval:

1. Compliance with all platting provisions of Title 19A of the King County Code.

2. All persons having an ownership interest in the subject property shall sign on the face of the final plat a dedication which includes the language set forth in King County Council Motion No. 5952.
3. The plat shall comply with the density requirements of the R-4-SO zone classification. All lots shall meet the minimum dimensional requirements of the R-4-SO zone classification or shall be as shown on the face of the approved preliminary plat, whichever is larger, except that minor revisions to the plat which do not result in substantial changes may be approved at the discretion of the Department of Development and Environmental Services.
4. All construction and upgrading of public and private roads shall be done in accordance with the King County Road Standards established and adopted by Ordinance No. 11187, as amended (1993 KCRS).
5. The applicant shall obtain documentation by the King County Fire Protection Engineer certifying compliance with the hydrant location, water main and fire flow standards of Chapter 17.08 KCC.
6. Final plat approval shall require full compliance with the drainage provisions set forth in King County Code 9.04. Compliance may result in reducing the number and/or location of lots as shown on the approved preliminary plat. Preliminary review has identified the following conditions of approval which represent portions of the drainage requirements. All other applicable requirements in KCC 9.04 and the Surface Water Design Manual (SWDM) must also be satisfied during engineering and final review.
 - a. Drainage plans and analysis shall comply with the 2005 King County Surface Water Design Manual and applicable updates adopted by King County. DDES approval of the drainage and roadway plans is required prior to any construction.
 - b. Current standard plan notes and ESC notes, as established by DDES Engineering Review, shall be shown on the engineering plans.
 - c. The following note shall be shown on the final recorded plat:

All building downspouts, footing drains, and drains from all impervious surfaces such as patios and driveways shall be connected to the permanent storm drain outlet as shown on the approved construction drawings # _____ on file with DDES and/or the King County Department of Transportation. This plan shall be submitted with the application of any building permit. All connections of the drains must be constructed and approved prior to the final building inspection approval. For those lots that are designated for individual lot infiltration systems, the systems shall be constructed at the time of the building permit and shall comply with plans on file."
 - d. The drainage facilities shall meet the requirements of the 2005 King County Surface Water Design Manual (KCSWDM). The site is subject to the Conservation flow control and Basic water quality requirements of the 2005 KCSWDM.
 - e. Drainage adjustment L05V0090 is approved for this project. All conditions of approval for this adjustment shall be met prior to engineering plan approval. This adjustment authorizes a shared drainage facility with the adjoining Short plat L05S0008.

- f. To implement the required Best Management Practices (BMP's) for treatment of storm water, the final engineering plans and technical information report (TIR) shall clearly demonstrate compliance with all applicable design standards. The requirements for best management practices are outlined in Chapter 5 of the 2005 KCSWDM. The design engineer shall address the applicable requirements on the final engineering plans and provide all necessary documents for implementation. The final recorded plat shall include all required covenants, easements, notes, and other details to implement the required BMP's for site development.
 - g. The 100-year floodplain for any on-site wetlands or streams shall be shown on the engineering plans and the final plat per Special Requirement #2 of the KCSWDM.
- 7. The proposed subdivision shall comply with the 1993 King County Road Standards (KCRS) including the following requirements:
 - a. Lots 1 thru 6 in the northern portion of the plat shall be served by a private access tract, improved per Section 2.09 of the KCRS.

Lots 7, 8, 9, and 11 shall also be served by a private access tract improved per Section 2.09 of the KCRS.
 - b. 172nd Pl SE shall be improved to a half-street width urban subaccess street standard (with a minimum of 20 feet width of unobstructed paved vehicular travel lanes plus an additional eight feet for interim shoulder and pedestrian walkway), from SE 192nd Drive northward to and including the permanent cul-de-sac adjoining proposed lots 11 and 12. (Note that this is intended to be part of a shared full road width improvement with the adjacent Short Plat L05S0008 and the Mitchell Short Plat L04S0016 to the southeast. The intent of this condition is that the ultimate full width road shall be constructed generally in conjunction with the short plats.)

Appropriate R/W shall be dedicated or deeded for the above 172nd Pl SE improvement. Any offsite R/W required for this improvement shall be acquired prior to engineering plan approval.
 - c. Individually, or jointly with other developers, the Applicant shall widen SE 192nd Street, from Petrovitsky Road to 172nd Place SE, to provide a minimum 24-foot wide roadway, together with a minimum five (5) foot wide paved shoulder. (Note: the Applicant's responsibility extends only to 172nd Place SE. Other developers' off-site improvement responsibilities extend from Petrovitsky Road easterly to the west subdivision boundary of the Village at Shady Lake (DDes File #L04P0017) plat.)
 - d. Modifications to the above road conditions may be considered according to the variance provisions in Section 1.08 of the KCRS.
 - e. A Road Variance L05V0020 is approved for this site. All conditions of approval for this variance shall be met prior to approval of the engineering plans.

- f. Safe walking conditions shall be documented by DDES as in place on the north side of Southeast 192nd Drive from 172nd Place Southeast easterly to the aforementioned school pedestrian trail, by no later than the first occupancy of any residence in the subdivision. Pedestrian improvements, if any are necessary, may be made individually or jointly with other developers.
8. All utilities within proposed rights-of-way must be included within a franchise approved by the King County Council prior to final plat recording.
9. The applicant or subsequent owner shall comply with King County Code 14.75, Mitigation Payment System (MPS), by paying the required MPS fee and administration fee as determined by the applicable fee ordinance. The applicant has the option to either: (1) pay the MPS fee at final plat recording, or (2) pay the MPS fee at the time of building permit issuance. If the first option is chosen, the fee paid shall be the fee in effect at the time of plat application and a note shall be placed on the face of the plat that reads, "All fees required by King County Code 14.75, Mitigation Payment System (MPS), have been paid." If the second option is chosen, the fee paid shall be the amount in effect as of the date of building permit application.
10. Lots within this subdivision are subject to King County Code 21A.43, which imposes impact fees to fund school system improvements needed to serve new development. As a condition of final approval, fifty percent (50%) of the impact fees due for the plat shall be assessed and collected immediately prior to recording, using the fee schedules in effect when the plat receives final approval. The balance of the assessed fee shall be allocated evenly to the dwelling units in the plat and shall be collected prior to building permit issuance.
11. The planter islands (if any) within the cul-de-sacs shall be maintained by the abutting lot owners or homeowners association. This shall be stated on the face of the final plat.
12. The proposed subdivision shall comply with the Critical Areas Code as outlined in KCC 21A.24. Permanent survey marking and signs as specified in KCC 21A.24.160 shall also be addressed prior to final plat approval. Temporary marking of sensitive areas and their buffers (e.g., with bright orange construction fencing) shall be placed on the site and shall remain in place until all construction activities are completed.
13. Preliminary plat review has identified the following specific requirements which apply to this project. All other applicable requirements from KCC 21A.24 shall also be addressed by the applicant.

Wetlands

- a. The Category III wetland shall have a 75 foot buffer as measured from the wetland edge. Per County Code the 75 foot buffer may be reduced to 50 feet as shown on the site plan
- b. The wetland and its buffer shall be placed in Critical Area Tracts (CAT) for long term protection. A split-railed fence or similar will need to be installed along the edge of the CAT.
- c. A 15-foot building setback line is required from the edge of Critical Area Tracts and shall be shown on all affected lots. No building foundations are allowed beyond the required 15-foot building setback line, unless otherwise provided by law.

- d. Storm drainage discharge pipes and outfall structures maybe allowed within Critical Area buffers, but not directly in the critical area itself.
- e. A buffer enhancement plan and financial guarantee will be required during engineering review.
- f. The engineering plans shall be submitted and reviewed by Critical Areas Staff.
- g. The following note shall be shown on the final engineering plan and recorded plat:

**RESTRICTIONS FOR CRITICAL AREA TRACTS AND CRITICAL
AREAS AND BUFFERS**

Dedication of a critical area tract/critical area and buffer conveys to the public a beneficial interest in the land within the tract/critical area and buffer. This interest includes the preservation of native vegetation for all purposes that benefit the public health, safety and welfare, including control of surface water and erosion, maintenance of slope stability, and protection of plant and animal habitat. The critical area tract/critical area and buffer imposes upon all present and future owners and occupiers of the land subject to the tract/critical area and buffer the obligation, enforceable on behalf of the public by King County, to leave undisturbed all trees and other vegetation within the tract/critical area and buffer. The vegetation within the tract/critical area and buffer may not be cut, pruned, covered by fill, removed or damaged without approval in writing from the King County Department of Development and Environmental Services or its successor agency, unless otherwise provided by law.

The common boundary between the tract/critical area and buffer and the area of development activity must be marked or otherwise flagged to the satisfaction of King County prior to any clearing, grading, building construction or other development activity on a lot subject to the critical area tract/critical area and buffer. The required marking or flagging shall remain in place until all development proposal activities in the vicinity of the sensitive area are completed.

- 14. Suitable recreation space shall be provided consistent with the requirements of KCC 21A.14.180 and KCC 21A.14.190 (i.e., sport court[s], children's play equipment, picnic table[s], benches, etc.).
 - a. A detailed recreation space plan (i.e. area calculations, dimensions, landscape specifications, equipment specifications, etc.) shall be submitted for review and approval by DDES and King County Parks prior to or concurrent with the submittal of the engineering plan. This plan must not conflict with the Significant Tree Inventory & Mitigation Plan.
 - b. A performance bond for recreation space improvements shall be posted prior to recording of the plat.
- 15. A homeowners' association or other workable organization shall be established to the satisfaction of DDES which provides for the ownership and continued maintenance of the recreation, open space and/or sensitive area tract(s).

16. Street trees shall be provided as follows (per KCRS 5.03 and KCC 21A.16.050):
- a. Trees shall be planted at a rate of one tree for every 40 feet of frontage along all roads. Spacing may be modified to accommodate sight distance requirements for driveways and intersections.
 - b. Trees shall be located within the street right-of-way and planted in accordance with Drawing No. 5-009 of the 1993 King County Road Standards, unless King County Department of Transportation determines that trees should not be located in the street right-of-way.
 - c. If King County determines that the required street trees should not be located within the right-of-way, they shall be located no more than 20 feet from the street right-of-way line.
 - d. The trees shall be owned and maintained by the abutting lot owners *or* the homeowners association or other workable organization unless the County has adopted a maintenance program. Ownership and maintenance shall be noted on the face of the final recorded plat.
 - e. The species of trees shall be approved by DDES if located within the right-of-way, and shall not include poplar, cottonwood, soft maples, gum, any fruit-bearing trees, or any other tree or shrub whose roots are likely to obstruct sanitary or storm sewers, or that is not compatible with overhead utility lines.
 - f. The applicant shall submit a street tree plan and bond quantity sheet for review and approval by DDES prior to engineering plan approval.
 - g. The applicant shall contact Metro Service Planning at 684-1622 to determine if SE 188th Street or 172nd Place SE is on a bus route. If SE 188th Street or 172nd Place SE is a bus route, the street tree plan shall also be reviewed by Metro.
 - h. The street trees must be installed and inspected, or a performance bond posted prior to recording of the plat. If a performance bond is posted, the street trees must be installed and inspected within one year of recording of the plat. At the time of inspection, if the trees are found to be installed per the approved plan, a maintenance bond must be submitted or the performance bond replaced with a maintenance bond, and held for one year. After one year, the maintenance bond may be released after DDES has completed a second inspection and determined that the trees have been kept healthy and thriving.
 - i. A landscape inspection fee shall also be submitted prior to plat recording. The inspection fee is subject to change based on the current County fees.
17. Sprinkler Requirement: All future residences constructed within this subdivision are required to be sprinkled NFPA 13D unless the requirement is removed by the King County Fire Marshal or his/her designee. The Fire Code requires all portions of the exterior walls of structures to be within 150 feet (as a person would walk via an approved route around the building) from a minimum 20-foot wide, unobstructed driving surface. To qualify for removal of the sprinkler requirement driving surfaces between curbs must be a minimum of 28 feet in width when parking is allowed on one side of the roadway, and at least 36 feet in width when parking is permitted on both sides.

18. To implement KCC 21.A.38.230, Special District Overlay – significant trees, which applies to the site, a detailed tree retention plan shall be submitted with the engineering plans for the subject plat. The tree retention and engineering plans shall be consistent with the requirements of KCC. No clearing of the site is permitted until the tree retention plan is approved by DDES. Flagging and temporary fencing of trees to be retained shall be provided, consistent with KCC. The placement of impervious surfaces, fill material, excavation work, or the storage of construction materials is prohibited within the fenced areas around preserved trees, except as may be permitted under the provisions of KCC.

A note shall be placed on the final plat indicating that the trees shown to be retained on the tree retention plan shall be maintained by the future owners of the proposed lots, consistent with KCC 21A.38.230B6. The tree retention plan shall be included as part of the final engineering plans for the subject plat.

19. The following have been established by SEPA as necessary requirements to mitigate the adverse environmental impacts of this development. The applicant shall demonstrate compliance with these items prior to final approval:

To mitigate the significant adverse impact (KCC 14.80.030B) the plat of Shady Lake Plat (DDES File #L05P0002) will have on the intersection of Southeast 192nd Drive/Petrovitsky Road, the Applicant shall install, either individually or in conjunction with other development projects in the area, a southbound left turn lane from Petrovitsky Road onto eastbound Southeast 192nd Drive. This turn lane shall comply with requirements in the King County Road Standards, including a 12-foot wide turn lane with no less than 100 feet of storage, one travel lane in each direction on Petrovitsky Road, eight (8) foot wide paved shoulders on each side of Petrovitsky Road and an illumination system meeting applicable County requirements. This may include relocation of any utilities conflicting with these requirements. Minor modifications to this may be proposed through the Variance process.

The design for the Southeast 192nd Drive/Petrovitsky Road intersection improvements shall be approved by the King County Department of Transportation.

In lieu of the installation of the above-noted intersection improvements prior to final plat approval, the Applicant (or successors or assigns) – either individually or jointly with other developers --may post a financial guarantee with King County which assures the installation of these improvements within two years of the recording of the plat of the Shady Lake Plat (DDES File #L05P0002). In this event, intersection improvement design must be approved by KCDOT prior to approval of the engineering plans for Shady Lake Plat.

20. A road luminaire shall be installed at the intersection of Petrovitsky Road and Southeast 188th Street, individually or jointly with other developers, and as part of or separately from the improvements required under the DNS mitigation measure implemented above in condition no. 19.
21. (Advisory only) During the construction plan review phase (either of the subdivision improvements or of the above Southeast 192nd Drive/Petrovitsky Road intersection and taper improvements, or both), the county should review the Petrovitsky Road geometry and pavement markings between Southeast 192nd Drive and Southeast 188th Street to examine the advisability of revisions, perhaps including signage, to assist drivers in maintaining lane control.

ORDERED June 26, 2008.

Peter T. Donahue
King County Hearing Examiner

NOTICE OF RIGHT TO APPEAL

In order to appeal the decision of the Examiner, written notice of appeal must be filed with the Clerk of the King County Council with a fee of \$250.00 (check payable to King County Office of Finance) ***on or before July 10, 2008***. If a notice of appeal is filed, the original and six (6) copies of a written appeal statement specifying the basis for the appeal and argument in support of the appeal must be filed with the Clerk of the King County Council ***on or before July 17, 2008***. Appeal statements may refer only to facts contained in the hearing record; new facts may not be presented on appeal.

Filing requires actual delivery to the Office of the Clerk of the Council, Room 1025, King County Courthouse, 516 3rd Avenue, Seattle, Washington 98104, prior to the close of business (4:30 p.m.) on the date due. Prior mailing is not sufficient if actual receipt by the Clerk does not occur within the applicable time period. The Examiner does not have authority to extend the time period unless the Office of the Clerk is not open on the specified closing date, in which event delivery prior to the close of business on the next business day is sufficient to meet the filing requirement.

If a written notice of appeal and filing fee are not filed within fourteen (14) calendar days of the date of this report, or if a written appeal statement and argument are not filed within twenty-one (21) calendar days of the date of this report, the decision of the hearing examiner contained herein shall be the final decision of King County without the need for further action by the Council.

MINUTES OF THE DECEMBER 13, 2007, PUBLIC HEARING ON DEPARTMENT OF DEVELOPMENT AND ENVIRONMENTAL SERVICES FILE NO. L05P0002.

Peter T. Donahue was the Hearing Examiner in this matter. Participating in the hearing were Trisha Bull and Bruce Whittaker, representing the Department of Development and Environmental Services; Kristen Langley representing the Department of Transportation; Larry Kruger and Aleanna Kondelis representing the Appellant; Joe Giberson; Don Kirk, representing the Parks Homeowners Association; Donald Fehlings; Joe Wickersham; and Alice Walls.

The following Exhibits were offered and entered into the record:

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| Exhibit No. 1 | Department of Development and Environmental Services File No. L05P0002 |
| Exhibit No. 2 | Department of Development and Environmental Services Preliminary Report, dated December 13, 2007 |
| Exhibit No. 3 | Application for Land Use Permits, received February 22, 2005 |

- Exhibit No. 4 SEPA Environmental checklist, dated February 22, 2005
- Exhibit No. 5 Mitigated Determination of Non-Significance, dated November 19, 2007
- Exhibit No. 6 Affidavit of Posting indicating a posting date of July 19, 2005 and received by DDES on July 16, 2005
- Exhibit No. 7 Preliminary plat map for L05P0002, dated August 17, 2007 (revised), received August 20, 2007
- Exhibit No. 8 Level I Downstream Drainage Analysis, received February 1, 2006 (revised)
- Exhibit No. 9 Conceptual Drainage Plan, received June 26, 2007
- Exhibit No. 10 Wetland Evaluation, received June 26, 2007 (revised)
- Exhibit No. 11 Approved KCSWDM Adjustment L05V0090
- Exhibit No. 12 Letter from Joe Giberson, President Shady Lake Community Council, to DDES Land Use Services Division, dated November 9, 2007
- Exhibit No. 13 Revision to Staff Report: section J, titled Public Services
- Exhibit No. 14 Annotated Aerial Photo
- Exhibit No. 15 Photograph of area, taken in 2005

The following Exhibits were entered into the record December 14, 2007:

- Exhibit No. 16 Email to the Hearing Examiner from Trishah Bull dated December 14, 2007, re: receipt of any appeals
- Exhibit No. 17 Email to the Hearing Examiner from Kristen Langley dated December 14, 2007, re: Code Authority, Timing of Improvements

PTD:gao
L05P0002 RPT